

ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of

TELEPHONE NUMBER PORTABILITY

CC Docket No. 95-116
RM 8535

REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION

TELECOMMUNICATIONS
RESELLERS ASSOCIATION

Charles C. Hunter
Catherine M. Hannan
HUNTER & MOW, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500
Its Attorneys

September 16, 1996

No. of Copies rec'd
A B C D E

0218

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. INTRODUCTION	1
II. ARGUMENT	4
A. The "Competitive Neutrality" Standard Demands That The Costs Of Shared Number Portability Facilities Be Allocated On The Basis Of "Net" Rather Than "Gross" Revenues (§§ 212 - 225)	4
B. Incumbent LECs Should Not Be Permitted To Recover Costs Not Directly And Exclusively Associated With The Deployment Of Service Provider Number Portability Under Section 251(e)(2) (§§ 221 - 229)	9
III. CONCLUSION	13

SUMMARY

The Telecommunications Resellers Association ("TRA"), an organization consisting of more than 450 resale carriers and their underlying product and service suppliers, offers the following further comments in the captioned rulemaking proceeding:

- The Further Notice was correct in concluding that the recovery of the costs of common facilities used to provide number portability should be allocated on the basis of "net" not "gross" revenues. Use of gross revenues as a cost allocation factor would result in not just double, but often triple or greater, recovery of shared number portability deployment costs from resale carriers and their customers. As the Commission elsewhere determined, "contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers."
- Consistent with this approach, "competitive neutrality" cannot be read to provide for contributions by carriers that do not offer local service and hence will not be the recipients of "ported" numbers. It certainly would not be "competitively neutral" to require a carrier which provides only interexchange service to fund the more diversified offerings of those IXCs which elect to provide local telecommunications, as well as long distance, services by contributing to number portability deployment. Moreover, a similar argument can be made with respect to assessing number portability costs on carriers engaged solely in the resale -- as opposed to the facilities-based provision -- of local telecommunications service. In the resale context, numbers are not actually "ported" because the underlying service remains that of the network provider and, accordingly, such carriers do not generate a cost of number portability. Certainly, it could be argued that "competitive neutrality" requires that only those carriers which actually avail themselves of number portability opportunities should fund the deployment of number portability capabilities.
- New market entrants should not be required to fund the network infrastructure enhancements of incumbent LECs, particularly since such enhancements will support capabilities which could be used to provide competitive service offerings. It matters little that the cost of deploying number portability exceeds that of implementing "800" database access. The principals applied in that context are applicable here regardless of the magnitude of costs. And with respect to number portability, the principals are all the more compelling because here it is not simply

a question of who will bear certain costs, as it was with "800" database access, but a matter of competitive equity. Finally, it is without consequence that the short-term beneficiaries of number portability will primarily be competitive LECs and not incumbent LECs. Not only will incumbent LECs ultimately benefit from number portability, but the competitive advantages they retain by virtue of the exclusive franchises they have held for many decades will continue to far outstrip the benefits of number portability to competitive LECs.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In The Matter of

TELEPHONE NUMBER PORTABILITY

)
)
) **CC Docket No. 95-116**
) **RM 8535**
)
)
)

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby replies to comments submitted by other parties in response to the Further Notice of Proposed Rulemaking, FCC 96-286, released by the Commission in the captioned docket on July 2, 1996 (the "Further Notice"). The comments to which TRA here responds address the mechanisms proposed in the Further Notice for recovering the costs associated with the deployment of long-term service provider number portability mandated in its First Report and Order.¹

I.

INTRODUCTION

In its First Report and Order in this proceeding, the Commission adopted rules and regulations implementing the Congressional directive embodied in Section 251(b)(2) of the

¹ Telephone Number Portability, CC Docket No. 95-116, FCC 96-286 (released July 2, 1996).

Telecommunications Act of 1996 ("1996 Act") that all local exchange carriers ("LECs") make available service provider number portability.² The Commission required LECs to initiate implementation of a long-term service provider number portability solution in the 100 largest Metropolitan Statistical Areas ("MSAs") no later than October 1, 1997, with deployment to be completed by December 1, 1998. In the interim, the Commission directed LECs to provide currently available number portability measures upon specific request from another carrier. The Commission adopted cost recovery principles applicable to such currently available number portability measures, but left to determination in this further phase of the proceeding the method by which the costs associated with long-term number portability solutions were to be recovered.

In its comments, TRA expressed the following views regarding the recovery of the costs associated with the deployment of long-term service provider number portability mandated in the First Report and Order:

- Section 251(b)(2)'s "competitive neutrality" standard requires that the universe of carriers which must share the cost burden associated with deploying number portability should be limited to carriers providing local exchange service, based upon their relative participation in the local exchange services market. "Competitive neutrality" cannot be read to provide for contributions by carriers which do not offer local service and hence will not be the recipients of "ported" numbers; indeed, the opposite is true. A carrier which provides only interexchange service, for example, would be competitively disadvantaged *vis-a-vis* carriers which provide both interexchange and local exchange services if required to contribute to the recovery of number portability costs because in making such contributions, it would be effectively funding its more diversified rivals' competitive service offerings.
- Within this universe of carriers, the centralized database costs should generally be recovered from all facilities-based providers of local exchange services. In the

² Pub. L. No. 104-104, 110 Stat. 56, § 251(b)(2) (1996).

short term, levying industry-wide number portability deployment costs only on those carriers that make use of the number portability database would favor incumbent local exchange carriers in violation of Section 251(c)(2)'s mandate of "competitive neutrality." And as the Commission has recognized, "[c]arriers taking unbundled elements or reselling services do not generate a cost of number portability." Further Notice, FCC 96-286 at ¶ 132, fn. 378.

- A revenue-predicated shared cost allocation scheme comports well with the Commission's articulated "competitive neutrality" principles, but only if the revenues on which number portability cost recovery is based are revenues generated solely by the provision of local exchange service. Moreover, "competitive neutrality" would be furthered, as the Further Notice, FCC 96-286 at ¶ 213 correctly recognizes, by "subtract[ing] out charges paid to other carriers . . . when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation."
- The costs of developing and implementing database hardware and software, as well as of operating and maintaining the number portability database should be, as suggested by the Further Notice, FCC 96-286 at ¶ 217, "recovered through monthly charges to the individual carriers using the database, allocated in proportion to each carrier's gross telecommunications revenues net of payments to other carriers." Costs associated with querying the database should be recovered through generally-applicable monthly charges; costs of uploading or downloading number portability routing information, however, are better recovered through usage-specific charges.
- The least manipulatable and the most "competitively neutral" means of recovering direct carrier-specific number portability deployment costs would be to require all LECs to bear the costs of deploying number portability on their own networks. A less attractive solution would be to arrange for reimbursement of such costs from a central fund administered by the number portability database administrator under the direction of the Commission. Under no circumstances should LECs be allowed to recover carrier-specific number portability deployment costs by assessing charges on competitive providers of local exchange service or the customers (or prospective customers) of such rival providers.
- As recognized by the Further Notice, FCC 96-286 at ¶ 226, "carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades." Given that all local exchange carriers -- competitive LECs, as well as incumbent LECs -- will incur costs in structuring their networks to

support number portability, "competitive neutrality" requires that each carrier fund the costs of enhancing its own network infrastructure.

- Consistent with the Commission's treatment of the costs associated with "800" number portability deployment, price cap carriers should be permitted to treat as exogenous those costs which are directly related to the deployment of number portability, and which are not directly reimbursed; costs incurred in upgrading network facilities and infrastructure should not be so classified.

TRA here responds to selected views to the contrary expressed by certain incumbent LEC commenters.

II.

ARGUMENT

A. **The 'Competitive Neutrality' Standard Demands That The Costs Of Shared Number Portability Facilities Be Allocated On The Basis Of 'Net' Rather Than 'Gross' Revenues (¶¶ 212 - 225)**

Section 251(e)(2) of the 1996 Act mandates that "[t]he cost of establishing . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."³ The Further Notice tentatively concluded that the recovery of the costs of common facilities used to provide number portability "should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers."⁴ Explaining its reliance on "net" rather than "gross" revenues, the Further Notice noted that "it is appropriate to subtract out charges paid to

³ 47 U.S.C. § 251(e)(2).

⁴ Further Notice, FCC 96-286 at ¶ 213 (emphasis added).

other carriers, such as access charges, when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation."⁵ "This," the Further Notice continued, "is because the revenues attributable to such charges effectively would be counted twice in determining the relative number portability costs each carrier should pay -- once for the carrier paying such charges and once for the carrier receiving them."⁶ TRA urges the Commission to adopt the Further Notice's use of "net" revenues and to reject arguments that cost allocations should instead be predicted on "gross" revenues.⁷

Use of gross revenues as a cost allocation factor would result in not just double, but often triple or greater, recovery of shared number portability deployment costs from resale carriers and their customers. As the Further Notice correctly recognized, the gross revenues of resale carriers would necessarily include payments to network providers as to which such network providers would have already contributed a designated percentage to fund shared number portability costs. And given that larger resale carriers often provide "wholesale" services to smaller resellers, a small resale carrier's gross revenues might well include revenues as to which multiple funding contributions would have been made. Facilities-based network providers will likely incorporate amounts contributed to fund shared number portability costs into their charges and pass them through to resale carriers. If resale carriers can incorporate such contributions into their rates, they too will pass their funding contributions through to their customers, along with

⁵ Id.

⁶ Id.

⁷ See, e.g., Comments of Bell Atlantic at pp. 4-7; Comments of Ameritech at pp. 4-7.

the contributions passed through to them by their network providers. In the event that multiple levels of resale are involved, three or more contributions could ultimately be incorporated into end-user charges.

The more likely scenario, however, is that market forces would prevent resale carriers from incorporating the multiple contributions into their charges, leaving resale carriers to bear the burden of not only their own direct contributions, but the contributions of their multiple network, and perhaps their "wholesale" service, providers as well. To avoid this eventuality in other contexts, the Commission chose to rely upon "net" as opposed to "gross" revenues in levying regulatory costs on carriers. With respect to regulatory fees, for example, the Commission permitted initially just interexchange carriers,⁸ and ultimately all interstate telephone service providers,⁹ to "subtract from their gross interstate revenues . . . any payments made to underlying common carriers for telecommunications facilities or services, including payments for interstate access service, that are resold in the form of interstate service."¹⁰ It did so specifically to "avoid imposing a double payment burden on resellers."¹¹

⁸ Assessment and Collection of Regulatory Fees for Fiscal Year 1995, 10 FCC Rcd. 13512, ¶ 135 (released June 19, 1995).

⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, FCC 96-295, Appx. F: FY 1996 Guidelines for Regulatory Fee Categories, ¶ 32 (released July 5, 1996). Assessment and Collection of Regulatory Fees for Fiscal Year 1996 (Notice of Proposed Rulemaking), MD Docket No. 96-84, FCC 96-153, FY 1996 Guidelines for Regulatory Fee Categories, ¶ 32 (released April 9, 1996).

¹⁰ Assessment and Collection of Regulatory Fees for Fiscal Year 1996, MD Docket No. 96-84, FCC 96-295, Appx. F: FY 1996 Guidelines for Regulatory Fee Categories at ¶ 32.

¹¹ Id.

The Commission took an equally equitable and reasoned approach in establishing the mechanism by which the North American Numbering Plan Administrator ("NANPA") will recover the costs of establishing telecommunications numbering administration arrangements under Section 251(e)(2).¹² In this instance, however, the Commission also emphasized the directive of Section 251(e)(2) that the costs associated with telecommunications numbering administration -- like those associated with the deployment of number portability -- be borne by all telecommunications carriers on a "competitively neutral" basis and concluded that allocation of funding responsibility on the basis of "gross" revenues would simply not satisfy this statutory mandate:

Contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers because the carriers from whom they purchase services or facilities will have included in their gross revenues, and thus in their contributions to number administration, those revenues earned from services and facilities sold to other carriers. Therefore, to avoid such an outcome, we require all telecommunications carriers to subtract from their gross telecommunications services revenues expenditures for all telecommunications services and facilities that have been paid to other telecommunications carriers.¹³

And the Commission expressly noted that this approach was consistent with the manner in which regulatory fees were assessed, explaining that "in order to avoid imposing a double payment burden on resellers," it had in both contexts permitted IXCs "to subtract from their reported gross

¹² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325, ¶ 343 (released August 8, 1996).

¹³ Id. at ¶ 343.

interstate revenues any payments made to underlying carriers for telecommunications facilities or services."¹⁴

Consistent with the Commission's calculation of regulatory fees and its allocation of responsibility for funding numbering plan administration, TRA agreed in its comments with the Further Notice's tentative conclusion that the recovery of the costs of common facilities used to provide number portability should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers. As the Commission noted in its Local Competition Order, "contributions based on gross revenues would not be competitively neutral for those carriers that purchase telecommunications facilities and services from other telecommunications carriers . . ."¹⁵

TRA also argued (and reiterates here) its view that the "competitive neutrality" standard requires that the universe of carriers which should share the cost burden associated with deploying number portability should be limited to carriers providing local exchange service. TRA agreed with the Further Notice that a competitively neutral cost recovery mechanism should not "give one service provider an appreciable incremental cost advantage over another service provider, when competing for a specific subscriber," and should not "have a disparate effect on the ability of competing service providers to earn a normal return."¹⁶ For these very reasons,

¹⁴ Id at ¶ 343, fn 713.

¹⁵ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 at ¶ 343.

¹⁶ Further Notice, FCC 96-286 at ¶ 210.

"competitive neutrality" cannot be read to provide for contributions by carriers that do not offer local service and hence will not be the recipients of "ported" numbers. It certainly would not be "competitively neutral" to require a carrier which provides only interexchange service to fund the more diversified offerings of those IXC's which elect to provide local telecommunications, as well as long distance, services by contributing to number portability deployment.

A similar argument can be made with respect to assessing number portability costs on carriers engaged solely in the resale -- as opposed to the facilities-based provision -- of local telecommunications service. As the Commission has recognized, "[c]arriers taking unbundled elements or reselling services do not generate a cost of number portability."¹⁷ Indeed, in the resale context, numbers are not actually "ported" because the underlying service remains that of the network provider. Certainly, it could be argued that "competitive neutrality" requires that only those carriers which actually avail themselves of number portability opportunities should fund the deployment of number portability capabilities.

B. Incumbent LECs Should Not Be Permitted To Recover Costs Not Directly And Exclusively Associated With The Deployment Of Service Provider Number Portability Under Section 251(e)(2) (¶¶ 221 - 229)

Section 251(e)(2) of the 1996 Act imposes on all telecommunications carriers only that "[t]he cost of establishing . . . number portability."¹⁸ In its comments, TRA agreed with the Further Notice that the "plain language of the statute" and "the 'competitively neutral' standard"

¹⁷ Further Notice, FCC 96-286 at ¶ 132, fn. 379.

¹⁸ 47 U.S.C. § 251(e)(2).

require shared recovery of only those costs directly attributable to number portability and not of "carrier-specific non-number portability-specific costs, such as upgrades to SS7 or AIN technologies."¹⁹ A number of incumbent LEC commenters, however, disagree with this assessment, arguing for recovery under Section 251(e)(2) of carrier-specific costs not directly related to deployment of number portability.²⁰ TRA urges the Commission to stand firm on this issue.

Precedent clearly supports the Further Notice's view. As TRA pointed out in its comments, the Commission made clear in allocating the costs associated with the deployment of "800" number portability that general network upgrades should be borne by all users of the network and not selectively allocated.²¹ "[O]nly those costs that are incurred specifically for the implementation and operation of the data base system," the Commission concluded, should be treated as the costs of providing data base access service."²²

The Commission's judgment in this respect reflected not the level or timing of costs, but the equities and the competitive implications. Thus, the Commission noted that the network upgrades that would accompany implementation of "800" database access "represent[ed] a new network infrastructure that would not only support a number of new interstate and state

¹⁹ Further Notice, FCC 96-286 at ¶ 209.

²⁰ See, e.g., Comments of GTE at pp. 3-6; Comments of Cinnati Bell at pp. 3-5; Comments of BellSouth at pp. 4-7; U S West Comments at pp. 9-13; USTA Comments at pp. 1-11.

²¹ Provision of Access for 800 Service, 4 FCC Rcd. 2824, ¶ 70 (1989), *recon.* 6 FCC Rcd. 5421 (1991), *further recon.* 8 FCC Rcd. 1038 (1993) (footnotes omitted).

²² Id.

services, but [would] also increase the efficiency with which LECs provide existing services, basic and non-basic."²³ Indeed, the Commission noted that the network upgrades would support a variety of intelligent network services, including alternate billing service, CLASS services, private virtual network services, ISDN, augmented 911 service and others.²⁴

The concerns here are remarkably similar. The Further Notice properly includes among the carrier-specific costs not directly related to the provision of number portability "costs of upgrading SS7 capabilities or adding intelligent network (IN) or advanced intelligent network (AIN) capabilities." These services, the Further Notice notes, "are associated with the provision of a wide variety of services unrelated to the provision of number portability, such as CLASS features."²⁵ These costs will be incurred by all facilities-based providers of local telecommunications services, including competitive LECs, as well as incumbent LECs. Incumbent LECs may be required to upgrade certain network capabilities; competitive LECs will be required to incorporate such capabilities into their network designs. Neither LEC subset should be required to fund the network infrastructure enhancements of the other, particularly since such enhancements will support capabilities other than number portability which could be used to provide more competitive service offerings.

It matters little that the cost of deploying number portability exceeds that of implementing "800" database access. The principal is the same irregardless of the magnitude of

²³ Id.

²⁴ Id. at ¶ 60, fn 118.

²⁵ Further Notice, FCC 96-286 at ¶ 227.

costs. And with respect to number portability, the principal is all the more compelling because it is not simply a question of who will bear certain costs, as it was with "800" database access, but a matter of competitive equity. If meaningful competition is to emerge in the local telecommunications market, new market entrants cannot be forced to subsidize incumbent LEC network upgrades. Moreover, it is of little consequence that the short-term beneficiaries of number portability will primarily be competitive LECs and not incumbent LECs. Not only will incumbent LECs ultimately benefit from number portability, but the competitive advantages they retain by virtue of the exclusive franchises they have held for many decades will continue to far outstrip the benefits of number portability to competitive LECs.

TRA, accordingly, urges the Commission not to permit the incumbent LECs to use number portability deployment as a vehicle for funding network infrastructure improvements. The Commission should not only hold fast to its tentative conclusion that network upgrades may not be funded under Section 251(e)(2), but in the event that it does not require all LECs to bear their own costs of deploying number portability on their networks, the Commission should narrowly define "direct carrier-specific costs" attributable to number portability deployment to ensure that all costs recovered under Section 251(e)(2) are indeed directly related to number portability.

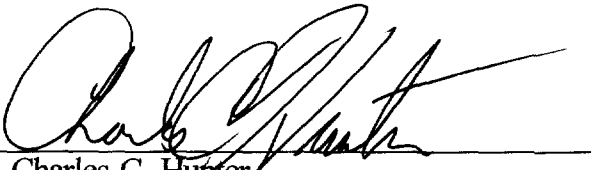
III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with its earlier-filed comments and these reply comments.

Respectfully submitted,

**TELECOMMUNICATIONS
RESELLERS ASSOCIATION**

By: 
Charles C. Hunter
Catherine M. Hannan
HUNTER & MOW, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

September 16, 1996

Its Attorneys